IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 872 of 1995

with

CRIMINAL APPEAL No 1034 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI ATABHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 872 of 1995
MR YOGESH S LAKHANI for Appellant
MR KC SHAH APP for Respondent

2. Criminal AppealNo 1034 of 1995
MR KC SHAH APP for Appellant
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 12/06/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

#. Incident occurred on June 9, 1992 at around 6.30 a.m. to 7.00 a.m. in Harijanvas of village Kodinar of District Amreli, wherein one Danabhai Samatbhai lost his life and hurt was caused to Samatbhai Thobhanbhai.

#. When the incident occurred, Girdharbhai Govindbhai came to the place and took Danabhai Samatbhai and Samatbhai Thobhanbhai to the hospital. Upon information received, police came to the hospital and recorded FIR given by Samatbhai Thobhanbhai. On the basis of the FIR, an offence was registered and investigation had started. After the investigation, it was found that Atabhai Tabhabhai, Manubhai Atabhai, Kanubhai Atabhai and Rambhai Atabhai were involved in commission of the offence. The police therefore filed charge sheet against these 4 persons. The Judicial Magistrate, Kodinar committed the case to the court of Sessions at Amreli as the charge was triable by the court of Sessions exclusively.

#. The case was registered as Sessions Case No. 104/92 and charge was framed against the accused persons at exh. 1. As per the charge, accused persons were charged to have committed an offence punishable under sections 504 read with section 34 of Indian Penal Code and section 324 read with section 34 of Indian Penal Code, by causing hurt to Samatbhai Thobhanbhai by giving pipe blows and axe blows. Charge was also framed for having caused murder of Danabhai Samatbhai by giving knife blows by accused Manubhai Atabhai punishable under section 302 read with section 34 of Indian Penal Code. The accused was charged to have committed an offence punishable under section 135 of Bombay Police Act.

#. Accused persons pleaded not guilty to the charge and expressed their desire to face the trial.

#. Prosecution led exclusive evidence and learned Additional Sessions Judge, Amreli came to a conclusion that the prosecution has successfully proved the charge of causing death of Danabhai Samatbhai, but concluded that only accused no. 2 - Manubhai Atabhai ought to be held responsible for the death of Danabhai Samatbhai and he cannot be punished for murder punishable under section

302 of I.P.C. Learned Additional Sessions Judge convicted accused no. 2 Manubhai Atabhai for the offence punishable under section 304(1) of I.P.C. and sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/- and in default in payment of fine to further undergo rigorous imprisonment for 6 months. No separate punishment was inflicted on accused no. 2 - Manubhai Atabhai for the offence punishable under section 135 of Bombay Police Act. So far as other accused persons namely Kanubhai Atabhai and Rambhai Atabhai were concerned, they were imposed with a fine of Rs. 100/- each and were convicted for the offence punishable under section 135 of Bombay Police Act and in default in payment of fine to undergo simple imprisonment for one week.

#. Aggrieved by the said judgment and order of conviction and sentence dated June 13, 1995 rendered by the learned Additional Sessions Judge, Amreli, the accused no. 2 - Manubhai Atabhai has preferred Criminal Appeal No. 572/95.

#. Aggrieved by the said very judgment and order, the State of Gujarat has also preferred Criminal Appeal No. 1034/95. At the time of admission, this appeal No. 1034/95 was admitted only qua accused no. 2 - Manubhai Atabhai and the appeal was dismissed qua accused nos. 1, 3 & 4 i.e. Atabhai Tabhabhai, Kanubhai Atabhai and Rambhai Atabhai by the order dated 18.4.96.

#. In both the appeals, the question that requires to be considered is conviction of accused - Manubhai Atabhai under section 304 Part I of I.P.C.

8.1 In the appeal preferred by the accused Manubhai Atabhai, conviction under section 304 Part I of I.P.C. is challenged, whereas in the appeal preferred by the State, conviction under section 304 part I of I.P.C. is challenged on the ground that the accused ought to have been convicted under section 302 of I.P.C.

#. Since both these appeals arise out of the same judgment and order and the questions involved are interconnected, both the appeals are heard together and decided by this common judgment. For the sake of convenience, appellant/original accused in Criminal Appeal No. 872/95 and respondent no. 2 in Criminal Appeal No. 1034/95 is addressed to as the accused in this judgment.

##. Before proceeding with the contentions raised before

this Court in both the appeals in order that they may be appropriately appreciated, facts leading to these appeals may be briefly stated.

##. As per the prosecution case, complainant Samatbhai Thobhanbhai stays in Harijan-Vankarvas at Kodinar. He had only one son namely Danabhai and they were staying together. The accused, with his father and brothers is the neighbour of the complainant. They had some dispute regarding construction of a wall between their respective properties. Both sides had lodged complaints prior to the incident. The accused had planned to construct a wall and apprehending some civil litigation had also lodged a caveat in the court and had then proceeded with the construction of the wall. On June 9, 1992, at about 6.30 a.m. to 7.00 a.m. when the complainant and his family members were in the house, Atabhai Tabhabhai came to their house and started giving abuses. The complainant therefore went out and inquired of Atabhai Tabhabhai the reason for giving abuses. This provoked Atabhai Tabhabhai and he started giving more and more abuses and picked up a quarrel. Around that time, Manubhai Atabhai came at the spot with an open knife, Kanubhai Atabhai came there with an axe and Rambhai Atabhai had an iron pipe in his hand. By the time these developments took place, Danabhai, son of the complainant came out from the house and tried to cool down Atabhai Tabhabhai. However, Atabhai Tabhabhai and his sons Manubhai Atabhai, Kanubhai Atabhai and Rambhai Atabhai got annoyed. Upon provocation of Atabhai Tabhabhai, Manubhai Atabhai gave a knife blow in the stomach of Danabhai Atabhai. The complainant intervened and therefore Kanubhai Atabhai gave an axe blow on the head of the complainant and Rambhai Atabhai gave a pipe blow which was received by the complainant - Samatbhai Thobhanbhai on his left hand in defence. Atabhai Tabhabhai had caused injury on the left thigh of the complainant with the stone. Wife of Danabhai namely Valiben and Samatbhai Thobhanbhai and Girdharbhai Govindbhai also reached the place of incident soon thereafter and the assailants therefore went away. Deceased Danabhai Samatbhai and the complainant were taken to the hospital where the deceased Danabhai was declared dead. On the basis of the FIR lodged by Samatbhai Thobhanbhai, offence was registered at C.R. No. 85/92 at Kodinar Police Station, the case was investigated upon and charge sheet was filed.

##. Learned advocate for the appellant in Criminal Appeal No. 872/95 Mr. Y.S. Lakhani, has contended that the conviction is not well-founded. According to him,

the trial court has overlooked certain material aspects which could raise reasonable doubt in the prosecution story. To emphasize his contention Mr. Lakhani submitted that the prosecution has examined only interested witnesses who are on inimical terms with the accused and who are interested in seeing that the accused are convicted. Mr. Lakhani further submitted that the prosecution witnesses have not come up with true facts. The picture that emerges on overall reading of the prosecution evidence is that the witnesses have tried to keep back genesis of the incident. Origin of incident is not only suppressed but is not correctly stated and therefore, no reliance could have been placed on the evidence of the eye witnesses.

##. Mr. Lakhani further contended that the court below has overlooked the fact that there was some heat generated just prior to the incident and there were some heated exchanges of words between the complainant side and the accused side which may have provoked the accused or which may have caused a reasonable apprehension in the mind of the accused regarding safety of person of his father. Mr. Lakhani submitted that if the evidence is seen, only one blow is given and subsequently though it was possible for the accused to have inflicted further blows, no further injury is caused to the deceased. Mr. Lakhani submitted that the accused side has also lodged a complaint against the complainant side in respect of this very incident wherein it has been alleged that the complainant side in this case had assaulted Atabhai Tabhabhai. Mr. Lakhani submitted that the conviction could not have been recorded, however, even if the conviction is upheld by way of alternative submission, Mr. Lakhani submitted that it could not have been murder as is rightly done by the trial court. Mr. Lakhani therefore urged that the appeal preferred by the accused may be allowed and conviction may be set aside and the appeal preferred by the State may be dismissed.

##. Countering the arguments advanced by Mr. Lakhani, learned Assistant Public Prosecutor Mr. K.C. Shah submitted that the conviction of accused no. 2 under section 304 Part I of I.P.C. is not proper. According to Mr. Shah, if the evidence is seen, there is nothing to indicate that there was any provocation caused by the deceased to the accused appellant. There is nothing on record to show that the father of the accused namely Atabhai Tabhabhai was also assaulted upon and that there was danger to his life. There already was some dispute going on between the parties in respect of the wall in question. The injury caused to the deceased is with a

knife. Though a single blow is given, medically it is found to be sufficient in ordinary course of nature to cause death of a human being and considering the nature of the force used and the seat of injury on the person of the injured, the alleged injuries legitimate inference could have been drawn about the intention of causing death on the part of the accused no. 2. Mr. Shah therefore urged that the appeal of the State may be allowed and conviction of the accused no. 2 under section 304 part I of I.P.C. may be converted into a conviction under section 302 of I.P.C. and the sentence be imposed as provided under the law. Mr. Shah submitted that there is no substance in the appeal preferred by the accused and the same therefore, may be dismissed.

##. We have been taken through the record and proceedings and the evidence by both the sides. We have carefully considered the record and proceedings and the evidence in light of the contentions raised by both the sides. Before proceeding to examine and discussing the evidence on record, law as propounded by the Apex Court on the contentions raised before us may be examined.

15.1 In the case of State of Karnataka v. Vedanayagam, reported in (1995) 1 SCC 326, the Apex Court after considering the law as laid down in various cases like Virsa Singh v. State of Punjab reported in 1958 SCR 1495, Jagrup Singh v. State of Haryana, reported in (1981) 3 SCC 616 and Prakash v. State (Delhi Administration), considered the question whether causing of a single injury by any of the accused, would be only culpable homicide though the medical evidence is to the effect that the same is necessarily fatal and sufficient in ordinary course of nature to cause death. After considering various judgments, the Apex Court observed that there is no legal basis to hold that since the respondent or accused gave only one blow found to be sufficient in ordinary course of nature to cause death, then clause 3rdly of section 300 IPC is not attracted.

##. In the case of Jagrup Singh v. State of Haryana [(1981) 3 SCC 616], the Apex Court in para 6 observed that the nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.

##. In the case of Jai Prakash v. State (Delhi Admn.), in para 18 the Apex Court observed thus.

" In all these cases, injury by a single blow was found to be sufficient in the ordinary course of nature to cause death. The Supreme Court took into consideration the circumstances such as sudden quarrel, grappling etc. as mentioned above only to assess the state of mind namely whether the accused had the necessary intention to cause that particular injury i.e. to say that he desired expressly that such injury only should be the result. It is held in all these cases that there was no such intention to cause that particular injury as in those circumstances, the accused could have been barely aware i.e. only had knowledge of the consequences. These circumstances under which the appellant happened to inflict the injury it is felt or at least a doubt arose that all his mental faculties could not have been roused as to form an intention to achieve the particular result. We may point out that we are not concerned with the intention to cause death in which case it will be a murder simplicitor unless exception is attracted. We are concerned under clause 3rdly with the intention to cause that particular injury which is a subjective inquiry and when once such intention is established and if the intended injury is found objectively to be sufficient in the ordinary course of nature to cause death, clause 3rdly is attracted and it would be murder, unless one of the exceptions to Section 300 is attracted. If on the other hand this ingredient of 'intention' is not established or if a reasonable doubt arises in this regard then only it would be reasonable to infer that clause 3rdly is not attracted and that the accused must be attributed knowledge that in inflicting the injury he was likely to cause death in which case it will be culpable homicide punishable under Section 304 Part II IPC."

##. The Apex Court in the case of State of Karnataka v. Vedanayagam reported in (1995) 1 SCC 326 held that the view that the accused did not intend to cause death by inflicting injury on the chest because there was no premeditation and therefore, the offence would be culpable homicide was erroneous and incorrect.

##. Against these decisions, learned advocate Mr. Lakhani has relied upon the decisions in the case of Aamad @ Kalu Abdulbhai Majothi & anr. v. State of Gujarat, reported in 1999 (1) GLR 466 and in the case of

Vijayee Singh and others v. State of U.P. reported in (1990) 3 SCC 190.

##. If the evidence is examined in light of the contentions raised before this Court, we find that the deceased Danabhai Samatbhai was aged 35 years and had sustained only one incise wound admeasuring 3 cms. x 2 cms. x 6 cms. about 6 cms. below sternum and 8 cms. above umbilicus. There was a corresponding internal injury causing incise wound of 2 cms. on the inferior border of the liver. According to the medical evidence, the deceased died due to shock and massive haemorrhage and due to injury on fatal organs like liver. Regarding this medical evidence, there is no dispute between the parties. The Medical Officer who had performed post mortem. Dr. Rasiklal Bavchandbhai Mandaviya has been examined at exh. 12. After narrating the injuries noticed by him on post mortem, he has stated that the injuries were possible with muddamal article 9. He also stated that the liver is a vital organ of the body and that the injury found on the person of the deceased was sufficient in ordinary course of nature to cause death. This doctor has been subjected to cross-examination and he has asserted that in every case with such injuries, a man would die in ordinary course of nature.

##. Now, coming to the evidence regarding the manner in which the incident has occurred, Samatbhai Thobhanbhai the first informant and father of the deceased Danabhai has been examined at exh. 24. This witness is an eye witness who had also sustained injuries in the incident. He has stated that they were at the residence on the day of incident sitting over a cup of tea at about 6.30 a.m. to 7.00 a.m. in the morning. At that time, Ata Tabha came to the door of his house and started giving abuses. He also asked them to come out. Samatbhai therefore tried to cool him down and inquired for the cause for giving abuses. Thereafter he came out of the house followed by his son Danabhai. Danabhai was standing on a side. Behind Danabhai was his wife. At that time, Rambhai Atabhai, Manubhai Atabhai and Kanubhai Atabhai were also there. Atabhai Tabhbhai caused injury to the complainant with stone on the left thigh and Manubhai Atabhai gave a knife blow to Danabhai in the stomach. Kanu Ata had axe with him and Rambhai Ata had a pipe with him. Because of the injury, Dana had staggered and therefore, the complainant and Valiben - wife of the deceased Dana rescued him. By that time, Sajanbhai brother of the complainant and Girdharbhai Govindbhai came to the spot. The deceased was taken in autorickshaw to the hospital. According to the complainant, he was

assaulted upon by Kanu Ata with an axe on his head and Rama Ata with a pipe on his hand. Upon being taken to the hospital, Dana was declared to have expired. The witness has identified the accused persons.

21.1 The witness was subjected to cross-examination. He admits that he had objection to the construction of a wall by the accused as it was causing obstruction. He also stated that the accused side had made construction as per their desire and therefore, they had no grievance. In the cross-examination, he has asserted that neither he nor his son had any weapon nor did they cause any injury to the accused persons nor did he notice any injury on the person of any of the accused.

21.2 During his cross-examination this witness has not exactly stated the sequence of the incident as narrated in his FIR. There is some contradiction regarding the arrival of the accused Manu Ata at the place of the incident i.e. whether he came to the place later on or along with his father and whether there was some attempt on the part of the deceased and the complainant to cool down the father of the accused i.e. Ata Tabha. A suggestion regarding some scuffle or quarrel has been put to the witness which has been denied.

##. Witness Girdharbhai Govindbhai has been examined at exh. 26. He states that upon hearing some row, he rushed to the place and found that there was exchange of abuses between both the sides. Samat Thobhan had stated as to why the accused side was abusing. Ata Tabha therefore told to assault and not to spare. At that time, Manu Ata who had a knife in his hand, gave a knife blow in the abdomen of the deceased Dana Samat. Kanu Ata gave axe blow to Samat and Rama Ata gave a pipe blow to Samat. He states further that the deceased and Samat were taken to the hospital. This witness is also cross-examined. He states that he had heard voice of the complainant as well as Dana but he could not catch the words. In the cross-examination, he states that none of the neighbours had gathered there at the time of the incident. He says that there was exchange of abuses between the house of the complainant and the accused no. 1. In cross-examination he states further that the accused Manu Ata had open knife in his hand. He however, did not make any attempt to cause injury to anybody else before causing injury to Dana nor did he cause any further injury to the deceased Dana after inflicting one blow.

##. Another eye witness Valiben - wife of the deceased

Dana is examined at exh. 27. She also states that at about 6.30 a.m. to 7.00 a.m. she was preparing tea and her husband and father-in-law were in the house. At that time, Ata Tabha and his three sons came there giving abuses. Ata Tabha challenged her father-in-law to come out and therefore, her father-in-law and her husband went out of the house. At that time, they all started abusing. Her father-in-law tried to cool them down. At that time, Manu Ata gave a knife blow to her husband in the abdomen. She therefore gave support to her husband at that time. Girdharbhai Govindbhai came at the place so also Sajan Thobhan. Kanu Ata gave axe blow to her father-in-law and Rama Ata had given pipe blow to her father-in-law. Thereafter the assailants went away. Deceased was taken to the hospital and was declared to have expired.

23.1 This witness has been cross-examined. Some contradictions are sought to be brought on record as to the sequence in which the deceased and the witness came out of the house. A suggestion regarding the complainant having assaulted the accused side has been denied by the witness. She has also denied the suggestion that in that scuffle, injury caused to the deceased was got up. Witness Ganga Pitha was panch witness in whose presence, knife was discovered by the accused Manu Ata. Witness at exh. 35 is a police witness who deposed about the complaint lodged with Kodinar Police Station by Samat Thobhan about some previous incident.

##. C.P.I. Usmangani M. Chopra is examined at exh. 29.

##. We have closely scanned the evidence to find that the evidence of the eye witnesses have remained consistent and are found to be reliable and therefore, have been rightly accepted by the trial court. There is no substance in the argument advanced on behalf of the accused by learned advocate Mr. Lakhani that the conviction could not have been recorded on the basis of this evidence. There is no reason for disbelieving the evidence of the injured eye witness i.e. the complainant Samat Thobhan and Valiben - wife of the deceased. Witness Girdharbhai Govindbhai also supports them. What is tried to be highlighted is as to whether the accused came to the place of the incident along with his father or he came subsequently and whether the complainant Samat Thobhan and the deceased Dana came out of the house simultaneously or the deceased followed the complainant and at what point of time Valiben came out. However, these arguments do not inspire any acceptability nor the

depositions indicate that the incident did not occurr. Considering that the witnesses who come from that strata of the society where educational standard is very low, it would be unfair to expect from them to produce a computerised sequential picture of the incident. The fact remains that the incident has occurred. Even as per the suggestion made in the cross-examination, in that incident fatal injury is caused to the deceased and that the said knife was with Manu Ata i.e. the accused no. 2 who is appellant herein. The second fold of argument of Mr. Lakhani is that there is no substance in the appeal of the State and the conviction even if is confirmed, it has to be confirmed under section 304 part I of I.P.C. It requires to be noted that what emerges from the evidence is that in the early hours of the date of the incident, accused - appellant Manu went to the place of incident armed with a knife. Taking it from any angle as to whether he went along with his father Ata Tabha or he subsequently joined him i.e., soon after he had no reason to carry a knife with him. Again there is nothing to indicate that any attempt was made by the deceased either to provoke him or his father or to assault and cause any injury either to the accused - appellant or anybody else from his group and therefore, there is nothing to indicate which could have aroused an apprehension in the mind of the accused - appellant regarding danger to person or property for causing of such injury to the deceased which ultimately resulted into death of the deceased. No overt act is indicated on the part of the deceased and therefore, there was no reason for the accused to have assaulted the deceased and caused fatal injury. There is medical evidence to indicate that the injury was of such a nature that it was sufficient in ordinary course of nature to cause death of a man. Injury is on the abdominal portion, few centimeters below stomach and few centimeters above the umbilicus. The blow is given with a force good enough to have caused injury to the liver. Depth of the injury as can be seen from post mortem note is 6 cms. This indicates the force with which the blow is given. Discovery panchnama exh. 30 shows that knife has a steel blade of 6 inches.

##. Now, if we consider the principles laid down by the Apex Court for considering whether this injury can be considered as intentional for causing death, it is pointed out by the Apex Court that the nature of intention has to be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death. In the instant case, the accused has used knife, the blade of which has a length of 6 inches. The injury is

caused just below the stomach and has affected the vital part like liver. The knife has gone as deep as 6 cms. in the body which reflects that the blow was given with a force and the outcome of the injury was that the deceased expired even before he reached the hospital. The attending circumstances which call for consideration are that the accused went to the place of incident armed with such deadly weapon in the absence of any reason. There is nothing to indicate any overt act on the part of the deceased either in the form of causing any provocation or any assault and therefore, there is no reason to for the accused to have assaulted and caused fatal injury to the deceased. It is also required to be noted that the evidence indicates that all the accused persons went together and each of them were armed with one weapon or the other. On all persons going together with arm or weapon at the place of incident and calling the deceased and his father out of the house clearly reflects their intention. Assuming for a moment that the accused did not come with his father to the place of incident but subsequently joined him, then also, he had no reason to carry a weapon with him. Nothing has transpired after his reaching the place of incident and causing the injury to the deceased on the vital part and therefore, the case could not have been carried for conviction under section 304 Part I of I.P.C. It is clear that the injury is caused in the absence of any reason. The injury is objectively found to be sufficient in ordinary course of nature to cause death of a human being by an independent witness viz. the Medical Officer. The weapon used is deadly weapon. The site of the injury on the person of the deceased is on a vital organ and injury is caused with such force that it ultimately reaches liver. This reflects that the injury was caused with a clear intention of causing death of the deceased. There is no scope for any other inference.

##. The trial court has convicted the accused under section 304 Part I of I.P.C. for the reason that there was only one knife blow inflicted upon the deceased in the abdominal portion and that if the deceased had moved even slightly, the injury to the liver could have been avoided and in that eventuality, the death of the deceased may not have ensued in ordinary course of nature and therefore, the case is considered to be fit to fall under section 304 Part I of I.P.C. In our view, the reasoning adopted by the trial court is not correct. The criteria for deciding whether the case would fall under Section 302 or 304 of I.P.C. are different. It would not be proper to hold that because the deceased did not move, fatal injury to the liver was caused and that had

he moved, injury would not have been caused and he would have survived or that his death would not have ensued in ordinary course of nature. The correct proposition in our view, is to consider whether in ordinary course, in a given situation, whatever has happened was or was not sufficient in ordinary course of nature to cause death of a human being. In the case before us, we have sufficient evidence before us to indicate that the injury was sufficient in ordinary course of nature to cause death of a human being. The injury is caused in absence of any reason. No provocation was caused by the deceased nor any act was committed by him to arouse any apprehension in mind of the appellant for assaulting the deceased with such a deadly weapon and such a force. This does not leave any scope open even for considering the case to fall under Sec. 304 of I.P.C.

##. For the reasons stated above, in our opinion, the accused - appellant ought to have been convicted under section 302 of I.P.C. and not under section 304 Part I of I.P.C. To that extent, the judgment impugned herein deserves to be modified by allowing the Criminal Appeal No. 1034/95 preferred by the State. On the other hand, we do not find any substance in the appeal preferred by the accused and the same deserves to be dismissed.

##. Criminal Appeal No. 872/95 is hereby dismissed. Conviction of the accused Manubhai Atabhai under section 304 Part I of I.P.C. is set aside and he is convicted under section 302 of I.P.C. for having caused murder of Dana Samat.

##. We are converting the conviction of the accused from under section 304 Part I of I.P.C. for which he is punished for rigorous imprisonment of 10 years to conviction under section 302 I.P.C. We are inclined to inflict the minimum punishment prescribed therefor as in our opinion, it is not one of the rarest of rare case where capital punishment is required to be imposed. Since we are imposing only a minimum punishment prescribed under the statute, we have deemed it not necessary to hear the accused on the question of sentence. The above order to be implemented by the Court of Sessions.

##. Criminal Appeal No. 1034/95 preferred by the State - appellant is hereby allowed.

[B.C. PATEL, J.] [A.L. DAVE, J.]

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